

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JOSHUA CARY MYERS,

Plaintiff,

v.

RENEE BAKER, *et al.*,

Defendants.

Case No. 3:14-cv-00082-MMD-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. Petitioner has paid the filing fee for this action. The petition shall now be filed and served on respondents.

Petitioner has filed a motion for the appointment of counsel. (Dkt. no. 1-3.) Pursuant to 18 U.S.C. § 3006(a)(2)(B), the district court has discretion to appoint counsel when it determines that the “interests of justice” require representation. There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See *Chaney*,

1 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The  
2 petition on file in this action is well-written and sufficiently clear in presenting the issues  
3 that petitioner wishes to bring. The issues in this case are not complex. It does not  
4 appear that counsel is justified in this instance. The motion for the appointment is  
5 denied.

6 It is therefore ordered that petitioner's motion for the appointment of counsel (dkt.  
7 no. 1-3) is denied.

8 It is further ordered that the Clerk of the Court shall file and electronically serve  
9 the petition upon the respondents.

10 It is further ordered that respondents shall have forty-five (45) days from entry of  
11 this order within which to answer, or otherwise respond to, the petition. In their answer  
12 or other response, respondents shall address all claims presented in the petition.  
13 Respondents shall raise all potential affirmative defenses in the initial responsive  
14 pleading, including lack of exhaustion and procedural default. Successive motions to  
15 dismiss will not be entertained. If an answer is filed, respondents shall comply with the  
16 requirements of Rule 5 of the Rules Governing Proceedings in the United States District  
17 Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have forty-five (45)  
18 days from the date of service of the answer to file a reply.

19 It is further ordered that any state court record exhibits filed by respondents shall  
20 be filed with a separate index of exhibits identifying the exhibits by number or letter.  
21 The hard copy of all state court record exhibits shall be forwarded, for this case, to the  
22 staff attorneys in the Reno Division of the Clerk of Court.

23 It is further ordered that, henceforth, petitioner shall serve upon the Attorney  
24 General of the State of Nevada a copy of every pleading, motion, or other document he  
25 submits for consideration by the Court. Petitioner shall include with the original paper  
26 submitted for filing a certificate stating the date that a true and correct copy of the  
27 document was mailed to the Attorney General. The Court may disregard any paper that  
28 does not include a certificate of service. After respondents appear in this action,

1 petitioner shall make such service upon the particular Deputy Attorney General  
2 assigned to the case.

3 DATED THIS 24<sup>th</sup> day of July 2014.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE